

AGREEMENT
BETWEEN
THE CITY OF FRISCO, TEXAS (CITY)
AND
FREESE AND NICHOLS, INC.
FOR
Professional Consulting Services
For The
Update of the Comprehensive Zoning Ordinance
SERVICES
AGREEMENT

made as of the ____ day of _____ in the Year Two Thousand and _____:

BETWEEN the City: The City of Frisco, Texas
 6101 Frisco Square Blvd
 Frisco, Texas 75034
 Telephone: (972) 292-5000

and the Consultant: Freese and Nichols, Inc.
 1701 N. Market Street, Suite 500 LB 51
 Dallas, Texas 75202
 Telephone: (214) 217-2200

for the following Project:

Update of the Comprehensive Zoning Ordinance

The City and the Consultant agree as set forth below.

THIS AGREEMENT is made and entered by and between the **City of Frisco, Texas**, a Home-Rule Municipal Corporation, hereinafter referred to as (the "City"), and **Freese and**

Nichols, Inc., hereinafter referred to as (the "Consultant"), to be effective from and after the date as provided herein the "Agreement".

WHEREAS, the City desires to engage the services of the Consultant to complete an Update of the Comprehensive Zoning Ordinance for the City, hereinafter referred to as (the "Project"); and

WHEREAS, the Consultant desires to render such consulting services for the City upon the terms and conditions provided herein.

NOW, THEREFORE, KNOW ALL PERSONS BY THESE PRESENTS:

That for and in consideration of the covenants contained herein, and for the mutual benefits to be obtained hereby, the parties hereto agree as follows:

**ARTICLE 1
CONSULTANT'S SERVICES**

- 1.1 **Employment of the Consultant** - The City hereby agrees to retain the Consultant to perform professional consulting services in connection with the Project. Consultant agrees to perform such services in accordance with the terms and conditions of this Agreement.
- 1.2 **Scope of Services** - The parties agree that Consultant shall perform such services as are set forth and described in Exhibit "A", which is attached hereto and incorporated herein by reference for all purposes. The parties understand and agree that deviations or modifications to the scope of services described in Exhibit "A", in the form of written change orders, may be authorized from time to time by the City.
- 1.3 **Schedule of Work** - The Consultant agrees to commence work immediately upon execution of this Agreement, and to proceed diligently with said work to completion as described in the Completion Schedule/Project Billing/Project Budget attached hereto as Exhibit "B" and incorporated herein by reference for all purposes.

**ARTICLE 2
THE CITY'S RESPONSIBILITIES**

- 2.1 **Project Data** - The City shall furnish required information, that it currently has in its possession, as expeditiously as necessary for the orderly progress of the work, and the Consultant shall be entitled to rely upon the accuracy and completeness thereof. The City shall coordinate with the North Central Texas Council of Governments to furnish planning data to assist in various phases of the study.
- 2.2 **City Project Manager** - The City shall designate, when necessary, a representative authorized to act on the City's behalf with respect to the Project (the "Project Manager"). The City or such authorized representative shall examine the documents submitted by the Consultant and shall render any required decisions

pertaining thereto as soon as practical so as to avoid unreasonable delay in the progress of the Consultant's services.

ARTICLE 3 CONSULTANT'S COMPENSATION

- 3.1 **Compensation for Consultant's Services** - As described in "Article 1, Consultant's Services", compensation for this project shall be on a lump sum basis not to exceed one hundred and sixty thousand dollars and zero cents (\$160,000.00), ("Consultant's Fee") and shall be paid in accordance with Article 3 and the Completion Schedule/Project Billing/Project Budget as set forth in Exhibit "B". The final fifteen (15) percent of the Consultant's Fee, or twenty four thousand dollars and zero cents (\$24,000.00) shall not be paid until the Consultant has delivered the final product as specified in the Project Deliverables section of the Scope of Services attached hereto as Exhibit "A".
- 3.2 **Direct Expenses** - Direct Expenses are included in the Consultant's Fee as described in Article 3.1 and include actual reasonable and necessary expenditures made by the Consultant and the Consultant's employees and sub-contractors in the interest of the Project for the expenses listed in the following Subparagraphs:
- 3.2.1 Automobile mileage reimbursement.
 - 3.2.2 Courier services.
 - 3.2.3 Fees paid for securing approvals of authorities having jurisdiction over the Project and Sales & Use Tax, if any.
 - 3.2.4 Reproductions and photographic services provided by commercial services.
 - 3.2.5 Models requested by the City.
 - 3.2.6 Expenses of data processing and Computer Aided Design and Drafting (CADD).
- 3.3 **Additional Services** - The Consultant shall provide the services as described in the Scope of Services as set forth in Exhibit "A" of this Agreement. If authorized in writing by the City, the Consultant shall provide additional services, to be compensated on a lump sum basis in accordance with this paragraph ("Additional Services"). These services may include, but not be limited to:
- 3.3.1 Additional meetings, hearings, work-sessions, or other similar presentations which are not provided for or contemplated in the Scope of Services described in Exhibit "A".
 - 3.3.2 Additional drafts and revisions to the Project which are not provided for or contemplated in the Scope of Services as described in Exhibit "A".
 - 3.3.3 Additional copies of final reports and maps which are not provided for or contemplated in the Scope of Services as described in Exhibit "A".

- 3.3.4 Photography, professional massing models which are not provided for or contemplated in the Scope of Services as described in Exhibit "A".
- 3.3.5 Compensation for Additional Services authorized by the City shall be in addition to the Consultant's Fee and shall be based on direct billable labor rates and expenses.
- 3.3.6 Compensation for Additional Services authorized by the City shall be in addition to the Consultant's Fee and shall be based on an hourly basis according to the following personnel rates. The rates set forth in this chart are subject to reasonable change provided prior written notice of said change is given to City.

Hourly Billable Rates By Position		
<i>Name</i>	<i>Position</i>	<i>Hourly Rate</i>
Dan Sefko	Group Manager	\$168.00
Eddie Haas	Senior Planner/Transportation	\$160.00
Craig Farmer	Planning Manager	\$146.00
Sherry Sefko	Senior Planner	\$127.00
Bryan Gant	GIS Analyst	\$102.00
Daniel Harrison/Erica Craycraft	Planner	\$ 84.00
Michele Brown	Word Processing	\$ 60.00
The ranges and individual salaries will be adjusted annually.		

- 3.4 **Invoices** – No payment to the Consultant shall be made until Consultant tenders an invoice to the City. Payments are payable to the Consultant within thirty (30) days from the date of invoice as long as the invoice is mailed to City within three (3) days of the date of the invoice. Invoices are to be mailed to City monthly documenting completed work and expenses. If any invoice remains outstanding and unpaid for more than sixty (60) days from the date of invoice, and Consultant has fully performed its obligations as set forth herein, the Consultant has the option upon written notice to the City, to suspend all work specified under this Agreement until the account is brought current. Continued performance and/or completion of work by the Consultant under this Agreement shall resume upon the payment of the earned fees by the City.
- 3.5 **Failure to Pay** - Failure of the City to pay an invoice, for a reason other than cause, to the Consultant within sixty (60) days from the date of the invoice shall grant the Consultant the right, in addition to any and all other rights provided, to, upon written notice to the City, refuse to render further services to the City and such act or acts shall not be deemed a breach of this Agreement. The City shall not be required to pay any invoice submitted by the Consultant if the Consultant breached any provision(s) herein.

- 3.6 **Adjusted Compensation** - If the Scope of the Project or if the Consultant's services are materially changed, the amounts of the Consultant's compensation shall be equitably adjusted as approved by City. Any additional amounts paid to the Consultant as a result of any material change to the Scope of the Project shall be agreed upon in writing by both parties before the services are performed.
- 3.7 **Project Suspension** - If the Project is suspended or abandoned in whole or in part for more than three (3) months, Consultant shall be entitled to compensation for any and all work completed to the satisfaction of City in accordance with the provisions of this Agreement prior to suspension or abandonment. In the event of such suspension or abandonment, Consultant shall deliver to City all finished or unfinished documents, data, studies, surveys, drawings, maps, models, reports, photographs and/or any other items prepared by Consultant in connection with this Agreement prior to Consultant receiving final payment. If the Project is resumed after being suspended for more than three (3) months, the Consultant's compensation shall be equitably adjusted as approved by the City. Any additional amounts paid to the Consultant after the Project is resumed shall be agreed upon in writing by both parties before the services are performed.

ARTICLE 4 OWNERSHIP OF DOCUMENTS

The Project is the property of the City, and Consultant may not use the documents, data, plans, or any other materials for any purpose not relating to the Project without City's prior written consent. City shall be furnished with such reproductions of the Project, data and maps as defined in the Project Deliverables section of Exhibit "A". Upon completion of the work, or any earlier termination of this Agreement under Article 3 and/or Article 7, Consultant will revise plans, data, and maps to reflect changes made while working on the project and promptly furnish the same to the City in an acceptable electronic format. All such reproductions shall be the property of the City who may use them without the Consultant's permission for any purpose relating to the Project, including, but not limited to, completion of the Project, and/or additions, alterations, modifications, and/or revisions to the Project.

ARTICLE 5 CONSULTANT'S ACCOUNTING RECORDS

Records of Direct Expenses and expenses pertaining to services performed in conjunction with the Project shall be kept on the basis of generally accepted accounting principles. Invoices will be sent to the City as indicated in Article 3.4. Copies of employee time sheets, receipts for direct expense items and other records of project expenses will be included in the monthly invoices.

ARTICLE 6

AUDITS AND RECORDS/PROHIBITED INTEREST

The Consultant agrees that at any time during normal business hours and as often as City may deem necessary, Consultant shall make available to representatives of the City for examination all of its records with respect to all matters covered by this Agreement, and will permit such representatives of the City to audit, examine, copy and make excerpts or transcripts from such records, and to make audits of all contracts, invoices, materials, payrolls, records of personnel, conditions of employment and other data relating to all matters covered by this Agreement, all for a period of one (1) year from the date of final settlement of this Agreement or for such other or longer period, if any, as may be required by applicable statute or other lawful requirement.

The Consultant agrees that it is aware of the prohibited interest requirement of the City Charter, which is repeated on the Affidavit, attached as Exhibit "C", and will abide by the same. Further, a lawful representative of Consultant shall execute the Affidavit attached hereto and incorporated herein by reference for all purposes. Consultant understands and agrees that the existence of a prohibited interest during the term of this Agreement will render the Agreement voidable.

ARTICLE 7

TERMINATION OF AGREEMENT/REMEDIES

City may, on thirty (30) days written notice to Consultant, terminate this Agreement, for any reason, before the termination date hereof, and without prejudice to any other remedy it may have. If City terminates this Agreement due to a default of and/or breach by Consultant and the expense of finishing the Project exceeds the Consultant's Fee at the time of termination, Consultant waives its right to any portion of Consultant's Fee as set forth in Article 3 herein and agrees to pay any costs over and above the fee which City is required to pay in order to finish the Project. On any default and/or breach by Consultant, City may elect not to terminate the Agreement, and in such event it may make good the deficiency in which the default consists, and deduct the costs from the Consultant's Fee due Consultant as set forth in Article 3 herein. If City terminates this Agreement and Consultant is not in default of the Agreement, Consultant shall be entitled to compensation for any and all work completed to the satisfaction of City in accordance with the provisions of this Agreement prior to termination.

In the event of any termination, Consultant shall deliver to City all finished and/or unfinished documents, data, studies, surveys, drawings, maps, models, reports, photographs and/or any other items prepared by Consultant in connection with this Agreement prior to Consultant receiving final payment.

The rights and remedies provided by this Agreement are cumulative, and the use of any one right or remedy by either party shall not preclude or waive its rights to use any or all other remedies. These rights and remedies are given in addition to any other rights the parties may have by law, statute, ordinance or otherwise.

ARTICLE 8 DISPUTE RESOLUTION/MEDIATION

In addition to all remedies at law, the parties may resolve/mediate any controversy, claim or dispute arising out of or relating to the interpretation or performance of this Agreement, or breach thereof, by voluntary mediation to be conducted by a mutually acceptable mediator.

ARTICLE 9 INDEMNITY

CONSULTANT SHALL RELEASE, DEFEND, INDEMNIFY AND HOLD HARMLESS CITY AND ITS CITY COUNCIL MEMBERS, OFFICERS, AGENTS, REPRESENTATIVES AND EMPLOYEES FROM AND AGAINST ALL DAMAGES, INJURIES (INCLUDING DEATH), CLAIMS, PROPERTY DAMAGES (INCLUDING LOSS OF USE), LOSSES, DEMANDS, SUITS, JUDGMENTS AND COSTS, INCLUDING REASONABLE ATTORNEY'S FEES AND EXPENSES (INCLUDING ATTORNEYS' FEES AND EXPENSES INCURRED IN ENFORCING THIS INDEMNITY), CAUSED BY THE NEGLIGENT, GROSSLY NEGLIGENT, AND/OR INTENTIONAL ACT AND/OR OMISSION OF CONSULTANT, ITS OFFICERS, AGENTS, REPRESENTATIVES, EMPLOYEES, SUBCONTRACTORS, LICENSEES, INVITEES OR ANY OTHER THIRD PARTIES FROM WHOM CONSULTANT IS LEGALLY RESPONSIBLE, IN ITS/THEIR PERFORMANCE OF THIS AGREEMENT AND/OR ARISING OUT OF GOODS AND/OR SERVICES PROVIDED BY CONSULTANT PURSUANT TO THIS AGREEMENT, REGARDLESS OF THE JOINT OR CONCURRENT NEGLIGENCE OR STRICT LIABILITY OF THE CITY (HEREINAFTER "CLAIMS"). THIS INDEMNIFICATION PROVISION AND THE USE OF THE TERM "CLAIMS" IS ALSO SPECIFICALLY INTENDED TO APPLY TO, BUT NOT LIMITED TO, ANY AND ALL CLAIMS, WHETHER CIVIL OR CRIMINAL, BROUGHT AGAINST CITY BY ANY GOVERNMENT AUTHORITY OR AGENCY RELATED TO ANY PERSON PROVIDING SERVICES UNDER THIS AGREEMENT THAT ARE BASED ON ANY FEDERAL IMMIGRATION LAW AND ANY AND ALL CLAIMS, DEMANDS, DAMAGES, ACTIONS AND CAUSES OF ACTION OF EVERY KIND AND NATURE, KNOWN AND UNKNOWN, EXISTING OR CLAIMED TO EXIST, RELATING TO OR ARISING OUT OF ANY EMPLOYMENT RELATIONSHIP BETWEEN CONSULTANT AND ITS EMPLOYEES OR SUBCONTRACTORS AS A RESULT OF THAT SUBCONTRACTOR'S OR EMPLOYEE'S EMPLOYMENT AND/OR SEPARATION FROM EMPLOYMENT WITH THE CONSULTANT, INCLUDING BUT NOT LIMITED TO ANY DISCRIMINATION CLAIM BASED ON SEX, SEXUAL ORIENTATION OR PREFERENCE, RACE, RELIGION, COLOR, NATIONAL ORIGIN, AGE OR DISABILITY UNDER FEDERAL, STATE OR LOCAL LAW, RULE OR REGULATION, AND/OR ANY CLAIM FOR WRONGFUL TERMINATION, BACK PAY, FUTURE WAGE LOSS, OVERTIME PAY, EMPLOYEE BENEFITS, INJURY SUBJECT TO RELIEF UNDER THE WORKERS' COMPENSATION ACT OR WOULD BE SUBJECT TO RELIEF UNDER ANY POLICY FOR WORKERS COMPENSATION INSURANCE, AND ANY OTHER CLAIM,

WHETHER IN TORT, CONTRACT OR OTHERWISE. CONSULTANT IS EXPRESSLY REQUIRED TO DEFEND CITY AGAINST ALL SUCH CLAIMS; PROVIDED, HOWEVER, IF A COURT OF COMPETENT JURISDICTION DETERMINES THAT THE CITY (WITHOUT WAIVING ANY GOVERNMENTAL IMMUNITY) HAS JOINT, CONCURRENT OR SOLE NEGLIGENCE FOR THE CLAIMS, IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS, THEN CONSULTANT IS NOT REQUIRED TO INDEMNIFY THE CITY TO THE EXTENT OF THE NEGLIGENCE APPORTIONED TO THE CITY.

IN ITS SOLE DISCRETION, CITY SHALL HAVE THE RIGHT TO APPROVE OR SELECT DEFENSE COUNSEL TO BE RETAINED BY CONSULTANT IN FULFILLING ITS OBLIGATION HEREUNDER TO DEFEND AND INDEMNIFY CITY, UNLESS SUCH RIGHT IS EXPRESSLY WAIVED BY CITY IN WRITING. CITY RESERVES THE RIGHT TO PROVIDE A PORTION OR ALL OF ITS OWN DEFENSE; HOWEVER, CITY IS UNDER NO OBLIGATION TO DO SO. ANY SUCH ACTION BY CITY IS NOT TO BE CONSTRUED AS A WAIVER OF CONSULTANT'S OBLIGATION TO DEFEND CITY OR AS A WAIVER OF CONSULTANT'S OBLIGATION TO INDEMNIFY CITY PURSUANT TO THIS AGREEMENT. CONSULTANT SHALL RETAIN CITY-APPROVED DEFENSE COUNSEL WITHIN SEVEN (7) BUSINESS DAYS OF CITY'S WRITTEN NOTICE THAT CITY IS INVOKING ITS RIGHT TO INDEMNIFICATION UNDER THIS AGREEMENT. IF CONSULTANT FAILS TO RETAIN COUNSEL WITHIN SUCH TIME PERIOD, CITY SHALL HAVE THE RIGHT TO RETAIN DEFENSE COUNSEL ON ITS OWN BEHALF, AND CONSULTANT SHALL BE LIABLE FOR ALL COSTS INCURRED BY CITY. THE RIGHTS AND OBLIGATIONS CREATED BY THIS PARAGRAPH SHALL SURVIVE TERMINATION OF THIS AGREEMENT.

ARTICLE 10 NOTICES

Consultant agrees that all notices or communications to City permitted or required under this Agreement shall be delivered to City at the following addresses:

Jeffrey Witt, AICP
Comprehensive & Environmental Administrator
Planning & Development Services
City of Frisco
6101 Frisco Square Blvd.
Frisco, Texas 75034

City agrees that all notices or communication to Consultant permitted or required under this Agreement shall be delivered to Consultant at the following address:

Dan Sefko, FAICP
Freese and Nichols, Inc.
1701 N Market Street, Suite 500 LB 51
Dallas, Texas 75202-2001

Any notice provided for under the terms of this Agreement by either party to the other shall be in writing and may be effected by registered or certified mail, return receipt requested.

All notices or communication required to be given in writing by one party or the other shall be considered as having been given to the addressee on the date such notice or communication is postmarked by the sending party. Each party may change the address to which notice may be sent to that party by giving notice of such change to the other party in accordance with the provisions of this Agreement.

ARTICLE 11 MISCELLANEOUS

- 11.1 **Complete Agreement** - This Agreement, including the exhibits hereto labeled "A" through "C", all of which are incorporated herein for all purposes, constitute the entire agreement by and between the parties regarding the subject matter hereof and supersedes all prior and/or contemporaneous written and/or oral understandings. This Agreement may not be amended, supplemented, and/or modified except by written agreement duly executed by both parties.
- 11.2 **Assignment and Subletting** - The Consultant agrees that neither this Agreement nor the work to be performed hereunder will be assigned or sublet without the prior written consent of the City. The Consultant further agrees that the assignment or subletting of any portion or feature of the work or materials required in the performance of this Agreement shall not relieve the Consultant of its full obligations to the City as provided by this Agreement. All such approved work performed by assignment or subletting shall be billed through Consultant, and there shall be no third party billing.
- 11.3 **Successors and Assigns** - City and Consultant, and their partners, assigns, successors, subcontractors, executors, officers, agents, employees, representatives, and administrators are hereby bound to the terms and conditions of this Agreement.
- 11.4 **Severability** - In the event a term, condition, or provision of this Agreement is determined to be invalid, illegal, void, unenforceable, or unlawful by a court of competent jurisdiction, then that term, condition, or provision, shall be deleted and the remainder of the Agreement shall remain in full force and effect as if such invalid, illegal, void, unenforceable or unlawful provision had never been contained herein.
- 11.5 **Venue** - This entire Agreement is performable in Collin County, Texas and the venue for any action related directly or indirectly, to this Agreement or in any

manner connected therewith shall be Collin County, Texas, and this Agreement shall be construed under the laws of the State of Texas.

- 11.6 **Execution/Consideration** - This Agreement is executed by the parties hereto without coercion or duress for any substantial consideration, the sufficiency of which is forever confessed.
- 11.7 **Authority** - The individuals executing this Agreement on behalf of the respective parties below represent to each other that all appropriate and necessary action has been taken to authorize the individual who is executing this Agreement to do so for and on behalf of the party for which his or her signature appears, that there are no other parties or entities required to execute this Agreement in order for the same to be an authorized and binding agreement on the party for whom the individual is signing this Agreement and that each individual affixing his or her signature hereto is authorized to do so, and such authorization is valid and effective on the date thereof.
- 11.8 **Waiver** - Waiver by either party of any breach of this Agreement, or the failure of either party to enforce any of the provisions of this Agreement, at any time, shall not in any way affect, limit or waive such party's right thereafter to enforce and compel strict compliance.
- 11.9 **Headings** - The headings of the various sections of this Agreement are included solely for convenience of reference and are not to be full or accurate descriptions of the content thereof.
- 11.10 **Multiple Counterparts** - This Agreement may be executed in a number of identical counterparts, each of which shall be deemed an original for all purposes.
- 11.11 **Sovereign Immunity** – The parties agree that the City has not waived its sovereign immunity by entering into and performing its obligations under this Agreement.
- 11.12 **Representatives** – Each signatory represents this Agreement has been read by the party for which this Agreement is executed and that such party has had the opportunity to confer with its counsel.
- 11.13 **Miscellaneous Drafting Provisions** – This Agreement shall be deemed drafted equally by all parties hereto. The language of all parts of this Agreement shall be construed as a whole according to its fair meaning, and any presumption or principle that the language herein is to be construed against any party shall not apply.

IN WITNESS WHEREOF, the parties have executed this Agreement and caused this Agreement to be effective on the latest day as reflected by the signatures below.

Effective Date: _____

CITY

The City of Frisco, Texas

By: _____

George Purefoy

Title: City Manager

CONSULTANT

Freese and Nichols, Inc.

By: _____

Alan D Greer, P.E.

Title: Vice President

STATE OF TEXAS

§

COUNTY OF COLLIN

§

§

BEFORE ME, THE UNDERSIGNED AUTHORITY, A NOTARY PUBLIC IN AND FOR THIS STATE OF TEXAS, ON THIS DAY PERSONALLY APPEARED **GEORGE PUREFOY**, KNOWN TO ME TO BE THE PERSON WHOSE NAME IS SUBSCRIBED TO THE FOREGOING INSTRUMENT AND ACKNOWLEDGED TO ME THAT HE EXECUTED THE SAME FOR THE PURPOSE AND CONSIDERATION EXPRESSED, AND IN THE CAPACITY THEREIN STATED.

GIVEN UNDER MY HAND AND SEAL OF OFFICE THIS ____ DAY OF _____, 20____.

Notary Public in and for State of Texas

STATE OF TEXAS

§

COUNTY OF COLLIN

§

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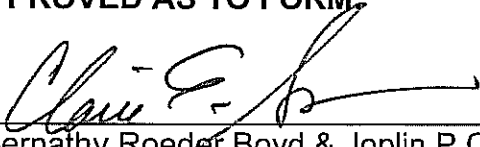
BEFORE ME, THE UNDERSIGNED AUTHORITY, A NOTARY PUBLIC IN AND FOR THIS STATE OF TEXAS, ON THIS DAY PERSONALLY APPEARED **ALAN D. GREER**, KNOWN TO ME TO BE THE PERSON WHOSE NAME IS SUBSCRIBED TO THE FOREGOING INSTRUMENT AND ACKNOWLEDGED TO ME THAT HE EXECUTED THE SAME FOR THE PURPOSE AND CONSIDERATION EXPRESSED, AND IN THE CAPACITY THEREIN STATED.

GIVEN UNDER MY HAND AND SEAL OF OFFICE THIS 17th DAY OF November, 2008.



Notary Public in and for State of Texas

APPROVED AS TO FORM:

A handwritten signature in black ink, appearing to read "Claire E. Swann", written over a horizontal line.

Abernathy Roeder Boyd & Joplin P.C.
Claire E. Swann, City Attorneys

EXHIBIT "A"

SCOPE OF SERVICES

Agreement between the City of Frisco, Texas (City) and Freese and Nichols, Inc.

For Update of the Comprehensive Zoning Ordinance

PROJECT DESCRIPTION

BASIC SERVICES: Consultant shall render the following professional services in connection with the development of the Project:

Section I - General Approach to the Project

A. Strategic Approach to Comprehensive Revision of the Zoning Ordinance

We propose a work program in two phases.

Phase 1

Review the City's Comprehensive Plan to ensure that any revision is reflective of the City's Comprehensive Plan development objectives and recent development trends. The emphasis of Phase 1 will be a strategic diagnostic analysis of the existing zoning ordinance and development approval process.

This phase involves defining the challenges and issues arising out of the City's current zoning ordinance and practices against the recommended policies of the Comprehensive Plan. This effort provides a policy foundation to guide the community's growth and development. We will build on this effort by undertaking an independent regulatory review and by obtaining consensus on the specific recommendations for the Comprehensive Zoning Ordinance update. It is anticipated that the City will use its own City Attorney for legal consultation on this project.

Phase 2

The preparation of a new Comprehensive Zoning Ordinance to implement the City's Comprehensive Plan objectives and the needs as identified by staff, Commissioners, developers and citizens.

This phase includes drafting the new Comprehensive Zoning Ordinance. The consensus achieved during the first phase should facilitate and accelerate the drafting process. Each phase is outlined below.

Both phases shall provide adequate opportunities for public participation and involvement to ensure that the work products are truly reflective of the community's needs and desires.

Section II - Phase 1: Diagnostic Evaluation of Zoning Regulations and Practices

A. Comprehensive Plan Review

Review the Comprehensive Plan for recommended development standards for inclusion in the updating of the Zoning Ordinance. The Comprehensive Plan has the community objectives, policies and implementation strategies related to land use, transportation, population changes and trends, economics, natural resources, cultural resources, community facilities and housing.

B. Independent Analysis

The central focus of this analysis will be the current zoning regulations. There are four essential lines of inquiry in evaluating a community's land use regulations:

- the adequacy of substantive development standards and rules
- the function and "user-friendliness" of development procedures
- the format of the regulations
- the interrelationships between various components of the overall regulatory program

Analysis of each is crucial to understanding how to tailor the regulations to achieve the community's goals and objectives in a manner that is both usable by the City and understandable by the development community.

C. Issue Development and Proposed Solutions

Once independent investigation has identified any challenges associated with the City's current zoning regulations, the consultants' task is to devise focused, realistic and usable solutions. The consultant proposes to structure the work program around development of concrete issues, which themselves fall within the four components of the regulatory program outlined in the preceding section:

- (1) development standards;
- (2) development procedures;
- (3) format of the regulations; and
- (4) coordination of regulatory programs.

This summary of probable issues arising from analysis of the City's development regulations and procedures is not intended to be exhaustive; other issues may, in fact, be equally or more important and yet others will be identified later in the process. The relative importance and priority attached to the issues will be determined during the diagnostic phase of the project.

D. Public Participation Strategy

The consultants believe that public participation at key points during the process of updating the City's Comprehensive Zoning Ordinance is important. During the first phase of the work program, it is recommended that the City create a Zoning Advisory Committee to assist in the public review process. The committee should be comprised of CPAC members, citizens, and members of the Frisco development community. During the second phase of drafting and adopting the Comprehensive Zoning Ordinance, we find that the best approach is to incorporate three "levels" of input into the process.

The first level of input is achieved at the City staff level. The City's staff has substantial background and technical expertise that they apply on a daily basis. As outlined in preceding sections, we anticipate extensive interaction and participation by the City staff throughout the project, including during the first phase.

The second level of input occurs through representation of interested groups and official bodies, such as stakeholders interviews: Chamber of Commerce, Developers, City Council, FDC, HOA's.

The third level of input is by Planning & Zoning Commissions and City Council of the City of Frisco. At several points during the formulation of the ordinance, it may be desirable in certain instances and

required in others to conduct workshops or public hearings at which these bodies can give testimony and input concerning the Comprehensive Zoning Ordinance revisions.

The consultants will propose a more detailed public participation strategy for the second phase of the work program that is suitable for distribution to the public.

E. Work Program for Phase 1: Diagnostic Evaluation of Zoning Regulations and Practices

The consulting team's approach to the project suggests the following work program for Phase 1.

Task 1 Briefly review and evaluate the City's Comprehensive Plan as a foundation for the Zoning Ordinance.

Review the Comprehensive Plan with City staff to affirm the community's development goals and growth objectives. Also, discuss any special section in the Plan that address the City's unique needs, such as major transportation corridors, unique neighborhoods, and employment generators.

Make any recommendations or clarification of the Comprehensive Plan as it relates to the proposed new Zoning Ordinance to staff, and P&Z Commission. (Three (3) meetings)

Task 2 Investigate and identify shortcomings and challenges arising from the City's application of its current zoning regulations.

Analyze land use conflicts that have occurred within Frisco, and identify any possible causes arising from current zoning regulations.

Analyze various elements of the City's regulatory programs that serve to promulgate current community goals and objectives (as stated in the Comprehensive Plan and/or other applicable planning policy documents).

Analyze the City's existing zoning regulations and identify any deficiencies or inconsistencies in standards, procedures, format and coordination among the various regulatory programs.

Analyze the City's process for reviewing development applications, and identify opportunities for expediting or simplifying approval of applications. Meet with the City Staff to discuss any findings. (Three (3) meetings)

In undertaking this task, the consultant will conduct several interviews with the City's administrative staff (including all City participants in the development review process such as those involved in planning, engineering, code compliance, public safety, and other applicable areas). (Six (6) meetings)

Task 3 Prepare a draft "Diagnostic Report" summarizing the results of the investigation and defining issues for deliberation.

The draft report will be presented to applicable City staff, the Zoning Advisory Committee, or City Planning & Zoning Commission, as the City directs, in a workshop forum that is conducive to active dialog and deliberation on issues, challenges and other salient topics associated with the City's current zoning ordinance.

Task 4 Refine issues and devise creative and realistic solutions through interactions with City staff and the Planning & Zoning Commission/Zoning Advisory Committee.

Critical issues and objectives will be formalized and documented as part of this task. This will be accomplished primarily through workshops, which utilize the findings of the Diagnostic Report as a “springboard” for brainstorming and interactive dialog with staff and the Zoning Advisory Committee.

- Task 5** Prepare and present a final Diagnostic Report to the Planning & Zoning Commission and City Council that summarizes the findings of the initial regulatory report, and that makes recommendations pertaining to revisions to the City’s zoning regulations.

The Diagnostic Report will contain a summary of the proposed resolution of each issue defined in Task 4 above, and will be organized according to:

- (1) development standards, including a proposed strategy for including the existing Zoning Map;
- (2) development procedures;
- (3) format for regulations; and
- (4) overall coordination of regulatory programs.

The report will incorporate an outline of the proposed regulations in accordance with the recommended format. It will also include recommendations on how Frisco’s zoning procedures and regulations can be made more user-friendly, as well as things the City can do to enhance its public image and to pro-actively encourage cooperation and high quality products from the development community. Finally, the report will include a section explaining the process for producing the new Comprehensive Zoning Ordinance. The report will be presented to the Planning & Zoning Commission and the City Council. (Eight (8) meetings)

Section III - Phase 2: Preparation of the Comprehensive Zoning Ordinance

A. General Approach to Preparation of the Comprehensive Zoning Ordinance

Phase 1 is designed to achieve a general consensus about the direction of revisions to the ordinances, culminating in a Diagnostics Report that is accepted by the City Council. It is important to note that in the preparation of a Comprehensive Zoning Ordinance that certain differences between zoning, platting, site plan review, and engineering regulations must be recognized and coordinated in the final documents. It is anticipated that minor changes will be made to the existing Zoning Map and that the existing Zoning Map will be “readopted” with the updated Comprehensive Zoning Ordinance.

B. Outline of Zoning Regulations Format

The consultants have found that the following divisions are effective in organizing municipal zoning regulations:

- General Provisions: Authority, relationship to the comprehensive plan, relationship to other regulations, responsibilities of officials and boards in approving development applications, definitions, and miscellaneous general provisions.
- Zoning District Regulations: Grouped by functional similarity and divided according to base or overlay zoning district provisions. In this division of the text, the consultants typically employ a use matrix to identify each permitted or conditional use authorized in each district. Typically, each district will incorporate provisions addressing permitted uses, conditional uses and accessory uses; area and dimensional standards; and special standards specific to the district. The classification and allowance of uses using performance standards will also be addressed.

- Special District Regulations: It is recognized that special zoning or overlay districts for character districts, redevelopment districts and major transportation corridors may also be included in the new Comprehensive Zoning Ordinance.
- Use-Specific Regulations: In this division, standards that are applicable to particular uses are to be grouped together. These standards may be applicable both to permitted and to conditional uses. Through this format, applicants and decision-makers can anticipate the types of requirements that apply to special or problem uses regardless of the district in which the use is proposed to be located.
- Development Standards and Supplemental Regulations: This division includes standards that are not use-specific, but which apply to many types of development, regardless of the zoning district in which the property is located. These include the normal regulations such as parking requirements, landscape requirements, and environmental performance standards plus form based zoning regulations that pay more attention to the layout and physical form rather than the use of the structure. In addition, enhanced stream setbacks buffer areas will also be examined.
- Zoning Procedures: This division sets forth both general provisions applicable to many or all zoning procedures, such as notice and hearing requirements, and the procedural steps for approval of specific types of requests. Typically included are sections pertaining to zoning amendments, conditional use provisions, special exceptions, planned developments, variances and appeals.
- Non-Conformity Rules: This final division should identify the City's policies on the continuation of non-conforming uses and structures, including rules governing abandonment, destruction, expansion, substitution and registration of non-conforming uses.
- Document Design: A major effort will be made to illustrate as many standards as possible in a graphic format. An example ordinance format will be submitted to the City Staff for approval, prior to preparation of the draft ordinance.

C. Work Program for Phase 2: Preparation of the Comprehensive Zoning Ordinance

Task 1a Prepare public review draft of the Comprehensive Zoning Ordinance.

Based upon the approved Diagnostic Report, the consultants will undertake the first draft of the revised Comprehensive Zoning Ordinance. After the initial draft has been prepared, the consultants will meet with City staff to discuss the content and organization of the draft and suggested revisions. The consultants anticipate that informal public review workshops will be conducted with the Zoning Advisory Committee, Planning & Zoning Commission, and City Council. Suggested revisions will be incorporated. The product of this task is a complete draft of the Ordinance ready for public review and adoption. (Eleven (11) meetings)

Task 1b Assist in the Public workshops on the zoning map.

After the City staff has developed the new zoning map, the Consultant will assist in presentation and public input phases for the new zoning maps. (Six (6) meetings)

Task 2 Convene public workshops to solicit comments on the draft Comprehensive Zoning Ordinance.

Following release of the public review draft of the Comprehensive Zoning Ordinance, formal public workshops will be convened to present the elements of the Ordinance and solicit comment in advance of formal public hearings. (Eight (8) meetings)

Task 3 Revise the public review draft of the Comprehensive Zoning Ordinance based upon input at the public workshops.

Based upon comments at the public workshops and direction from the City Planning & Zoning Commission and City Council, the consultant will prepare the recommended final draft incorporating appropriate revisions. The product of this task will be a draft Comprehensive Zoning Ordinance suitable for presentation prior to the public hearing as required by State law. (Two (2) meetings)

Task 4 Present the draft Comprehensive Zoning Ordinance at public hearings.

The consultants will assist the City staff at scheduled public hearings before the Planning & Zoning Commission and the City Council in presenting the draft Comprehensive Zoning Ordinance to the public. (Six (6) meetings)

Task 5 Final revisions to the Comprehensive Zoning Ordinance.

Based upon testimony at the public hearings and direction from the Planning & Zoning Commission and City Council, the consultants will prepare and present any revisions for final adoption of the Comprehensive Zoning Ordinance. Final documents, as approved by the City Council, will be delivered to the City. The Ordinance will also be delivered in an electronic format suitable for use by the City. (Two (2) meetings)

CITY RESPONSIBILITIES

It will be the City's responsibility to prepare the zoning map for the new Zoning Ordinance.

- The City shall be responsible for all public notifications as required by law.
- The City shall be responsible for posting items or information about the project on its own website.
- The City shall be responsible for organizing meeting places and times.

CONSULTANT RESPONSIBILITIES

The Consultant will be responsible for summary minutes of each meeting. (i.e. not a detailed transcript, only action or discussion items, and relevant discussion)

PROJECT DELIVERABLE

The product of the work program will be a new Comprehensive Zoning Ordinance that can be distributed in both hard copy and electronic formats, and any application maps if so desired. The Consultant will deliver one (1) hard copy and one electronic Word file to the City.

PROJECT LABOR ALLOCATION

Task	Subtask	Man-hours
Phase 1	Diagnostic Evaluation of Zoning Regulations and Practices	235 Hours
Phase 2	Preparation of the Comprehensive Zoning Ordinance	834 Hours
TOTAL PROJECT		1,069 Hours

EXHIBIT "B"
COMPLETION SCHEDULE/PROJECT BILLING/PROJECT BUDGET

Agreement between the City of Frisco, Texas (City)
and Freese and Nichols, Inc. (CONSULTANT)
For the Update of the Comprehensive Zoning Ordinance

Incorporated within this Scope of Services are fifty-two (52) meetings in Frisco that the Consultant will attend and conduct throughout this project. The meetings will be generally allocated as outlined as follows:

MONTH	TASK COMPLETED	COST	MEETINGS
Dec 08-Feb 09	Diagnostic Investigation	\$ 22,500	12
March 09	Diagnostic Review Report Draft	\$ 12,900	4
April 09	Final Diagnostic Report	\$ 8,525	4
April 09-Sep 09	Draft Ordinance Preparation	\$ 66,500	8
Oct 09	1 st Draft Ordinance Delivered	\$ 10,400	4
Nov 09	2 nd Draft Ordinance Delivered	\$ 9,600	4
Dec 09	3 rd Draft Ordinance Delivered	\$ 4,500	2
Jan 2010	Public Hearings	\$ 2,000	2
Feb 2010	Revisions	\$ 8,000	2
Mar 2010	Workshops	\$ 13,075	8
Apr 2010	Adoption	\$ 2,000	2
TOTAL		\$160,000	52

Any meeting and/or public hearing that the Consultant is required to attend above and beyond the fifty-two (52) meetings included within this Scope of Services will be billed to the City of Frisco at the applicable hourly rates outlined in this Contract Agreement. Billable hours will include the time it takes the Consultant to drive to and from the City of Frisco.

Consultant will only invoice City for time and expense actually incurred.

EXHIBIT "C"
CITY OF FRISCO CONTRACTOR INSURANCE GUIDELINES

I. Requirement of Insurance –

- A. Such policy shall name the City, its officers, agents, representatives, and employees as additional insured as to all applicable coverage with the exception of workers compensation insurance.
- B. Such policy shall require the provision of written notice to City at least thirty (30) days prior to cancellation, non-renewal, or material modification of any policies, evidenced by return receipt or United States Certified Mail.
- C. Such policy shall provide for a waiver of subrogation against the City for injuries, including death, property damage, or any other loss to the extent the same is covered by the proceeds of the insurance.

II. Insurance Company Qualification – All insurance companies providing the required insurance shall be authorized to transact business in the State of Texas, and shall have a minimum rating of "A" by A.M. Best's Key Rating Guide, or other equivalent rating service(s).

III. Certificate of Insurance – A Certificate of Insurance evidencing the required insurance shall be submitted with the contractor's bid or response to proposal. If the contract is renewed or extended by the City a Certificate of Insurance shall also be provided to the City prior to the date the contract is renewed or extended.

IV. Insurance Checklist – "X" means that the following coverage is required for this Agreement.

	Coverage Required	Limits
<u> X </u>	1. Worker's Compensation & Employer's Liability	<ul style="list-style-type: none"> ▪ Statutory Limits of the State of Texas
<u> </u>	2. General Liability	<ul style="list-style-type: none"> ▪ Minimum \$ 1,000,000.00 each occurrence;
<u> </u>	3. XCU Coverage	<ul style="list-style-type: none"> ▪ Minimum \$ 1,000,000.00 per occurrence; ▪ Minimum \$ 2,000,000.00 aggregate.
<u> X </u>	4. Professional Liability	<ul style="list-style-type: none"> ▪ Minimum \$ 1,000,000.00 each occurrence; ▪ Minimum \$ 2,000,000.00 in the aggregate.
<u> X </u>	5. Umbrella Coverage or Excess Liability Coverage	<ul style="list-style-type: none"> ▪ An amount of \$ 2,000,000.00.
<u> </u>	6. City named as additional insured on General Liability Policy. This coverage is primary to all other coverage the City may possess.	
<u> X </u>	7. City provided with Waiver of Subrogation on Worker's Compensation Insurance.	
<u> X </u>	8. Thirty (30) days notice of cancellation, non-renewal, or material change required. The words "endeavor to" and "but failure" (to end of sentence) are to be eliminated from the Notice of Cancellation provision on standard ACORD certificates.	
<u> X </u>	9. Insurance company has a minimum rating of "A" by A.M. Best's Key Rating Guide, or other equivalent rating service(s).	
<u> X </u>	10. The Policy and Certificate of Insurance both must state the project title and bid number.	
<u> </u>	11. Other Insurance Requirements (State Below):	